

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of B.F. MCQUEEN, Minor.

UNPUBLISHED

July 23, 2013

No. 314640

Muskegon Circuit Court

Family Division

LC No. 12-041865-NA

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Before: MURPHY, C.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Respondent father appeals the trial court's order terminating his parental rights to the minor child. For the reasons set forth below, we affirm.

On October 17, 2012, petitioner filed a petition requesting the termination of respondent's parental rights. Petitioner suspected abuse because the child's limbs were broken in six places. The petition alleged that respondent abused the child and that he pleaded nolo contendere to second-degree child abuse on October 2, 2012.

On January 8, 2013, respondent told the trial court that he wished to release his parental rights to the child. Respondent signed an advice of rights form that began with the statement "[y]ou have offered to plead of [sic] admission or nolo contendere in this matter and consent to the court terminating your parental rights." The advice of rights form also stated that respondent had the right to an attorney, the right to a trial by a judge or jury, the right to have the petitioner prove the allegations in the petition by clear and convincing evidence, the right to have witnesses appear under oath, the right to cross-examine witnesses, the right to have the trial court subpoena any witnesses that could give testimony in his favor, and the right to testify. The form clearly stated that by consenting to termination, respondent would give up those rights. Further, respondent affirmed, by signing the advice of rights form, that he was "advised of the consequences of the plea," that "[n]o promises or threat [sic] have been made against me," that he was "entering this plea of my own free will," and that he "underst[ood] and agree[d] to waive all of the above rights." Additionally, respondent acknowledged on the record that the allegations in the petition were true, that no one had coerced or threatened him to enter a plea of admission, that he was entering the plea of his own free will, and that termination was in the minor child's best interests. Based on the advice of rights form and respondent's statements, the trial court found that respondent's plea was "understandingly, voluntarily and accurately made" and accepted the plea.

Respondent now argues that his release of parental rights was involuntary because he released his parental rights under the Adoption Code, MCL 710.21 *et seq.*, and the trial court failed to follow the statutory procedure for such a release under MCL 710.29. This unpreserved issue is reviewed for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

The title of the advice of rights form respondent signed when he entered his plea stated that the form was “advice of rights termination of parental rights.” Also, the form stated that “[y]ou have offered to plead of admission [sic] or nolo contendere in this matter and consent to the court terminating your parental rights.” The remainder of the form included references to the petition to terminate respondent’s rights, respondent’s right to an attorney, and the right to a trial. The amended petition in this case sought termination under MCL 712A.19b(3)(k)(iii), a provision of the Juvenile Code and not the Adoption Code, which is found at MCL 710.21 *et seq.* Additionally, after respondent entered his plea, the trial court provided him with a form advising him of his appellate rights, which explicitly indicated that it applied to a termination of parental rights under the Juvenile Code, MCL 712A.1 *et seq.* It is clear that respondent’s plea was entered under the Juvenile Code and not the Adoption Code. And, a “decision to consent to the termination of his parental rights does not transfer the proceeding from the juvenile code to the adoption code.” *In re Toler*, 193 Mich App 474, 478; 484 NW2d 672 (1992). Thus, the trial court was not required to follow the requirements listed in MCL 710.29. *Id.* at 477.

A parent’s consent to termination under the Juvenile Code must be made knowingly and voluntarily. See *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). MCR 3.971 governs entering a plea of admission to a petition to terminate parental rights under the Juvenile Code. Based on the record, respondent understood that he was terminating his parental rights to the child and that in doing so he was waiving the rights available to him. Respondent affirmed that he was not coerced into the plea and that he was making the plea of his own free will. Further, the trial court complied with MCR 3.971 in entering respondent’s plea. Respondent has failed to show plain error in the trial court’s finding that respondent’s plea was “understandingly, voluntarily and accurately made.” *Utrera*, 281 Mich App at 8; *Burns*, 236 Mich App at 292.

Respondent also argues that the trial court erred in finding that the termination of respondent’s parental rights was in the minor child’s best interests. However, at the January 8, 2013 hearing, respondent acknowledged that he was consenting to the termination of his parental rights because it was in his child’s best interest. Respondent has waived this issue. See *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008).

Affirmed.

/s/ William B. Murphy  
/s/ Henry William Saad  
/s/ Deborah A. Servitto